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In the Supreme Court of the United States

DONALD J. TRUMP, ET AL.,
Petitioners,

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,
Respondents.

DONALD J. TRUMP, ET AL.,
Petitioners,

v.

STATE OF HAWAII, ET AL.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Fourth and Ninth Circuits

BRIEF FOR *AMICUS CURIAE* SYRIAN ASYLEE AHMAD M. IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*

Ahmad M. is an asylee from Aleppo, Syria, who fled the Syrian Civil War in 2014.[1] He received asylum in the United States in 2016 and promptly sought derivative-asylum status for his wife and daughter, whom Ahmad had been forced to leave behind. The derivative-asylum process was well underway when President Trump signed his first Executive Order banning entry from Syria and six other majority-Muslim countries. That Executive Order halted Ahmad's derivative petitions, as did its replacement, Executive Order 13,780 (the "Order").

Ahmad challenged the Order and, in March 2017, a federal district court enjoined its enforcement against Ahmad and his family, recognizing the irreparable harm the Order caused and the equities his case presented. *Doe* v. *Trump*, 2017 WL 975996 (W.D. Wis. Mar. 10, 2017). Because of that injunction and the nationwide injunctions under review here, Ahmad's petitions were processed, and he reunited with his wife and daughter in Wisconsin in April 2017.

Ahmad shares his story in the hope of sparing others from an order that tears families apart. He urges the Court to vindicate the fundamental American values underlying the carefully calibrated immigration laws that Congress created.

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[1] Petitioner has filed blanket consents to the filing of *amicus* briefs in these cases. Emails from respondents consenting to the filing of this brief have been filed with the Clerk. No counsel for a party authored this brief in whole or in part, and no party or party's counsel made a monetary contribution intended to fund its preparation or submission. *Amicus*'s counsel funded in entirety the preparation and submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

What is at issue in these cases is, at bottom, a matter of congressional intent. The Government argues that Congress granted the President unlimited and unreviewable authority to close the Nation's borders to certain nationalities.

But Congress's "specific statutory directions" in the Immigration and Nationality Act ("INA") instruct that aliens seeking admission are to be evaluated as individuals, not as members of a national, ethnic, or religious group. *Kerry* v. *Din*, 135 S. Ct. 2128, 2140 (2015) (Kennedy, J., concurring); 8 U.S.C. § 1152(a)(1)(A) (the Executive may not discriminate in issuing visas on the basis of "race, sex, nationality, place of birth, or place of residence"). Here, the President has adopted sweeping, group-based classifications that are incompatible with these congressional directives and with "the simple command that the Government must treat" individuals "as individuals, not as simply components of a racial, religious, sexual, or national class." *Miller* v. *Johnson*, 515 U.S. 900, 911 (1995) (internal quotation marks omitted). The Order therefore exceeds the President's authority.

Ahmad's story shows why the Government's view of the President's statutory power cannot and should not carry the day. Ahmad and his family are precisely those whom the asylum laws are meant to protect. Receiving asylum in the United States "was one of the most memorable moments of [his] life," Ahmad explained in his suit to enjoin the Order. Aff. of John Doe ¶ 21, *Doe* v. *Trump*, No. 17-cv-00112 (Feb. 13, 2017), ECF No. 11 ("Aff."). "Yet, at the same time, [he]

was terribly afraid" for his family, and was "desperate to get them to safety." *Id.* Ahmad had good reason to worry. Ahmad's three-year-old son was killed in Aleppo while fleeing an artillery strike in 2015. Given the security conditions in Aleppo, Ahmad's son was "hastily buried in an unmarked grave." *Id.* ¶¶ 18-19. His wife and daughter, facing a constant threat of rape and murder by militia members, went into hiding. Ahmad did not know if he would ever see them again—and by the Executive's lights, he never would have. The Order would have stranded them in Syria, where they faced almost-certain death. But because the federal courts intervened, Ahmad reunited with his family in Wisconsin, where they now live and play a productive role in their community.

Ahmad's narrative exposes how the Order, by regulating entry based on arbitrary, nationality-based distinctions, "slic[es] deeply into the family itself," *Moore v. City of E. Cleveland*, 431 U.S. 494, 498 (1977) (plurality opinion), unlawfully separating American immigrants from their relatives. The Order targets immigrant families, refugees, and asylees purely because they share a nationality with a few others who are extremists. Congress could not have intended such a result. The Order cannot be squared with the Nation's laws or most fundamental values, and it should be set aside.

ARGUMENT

I. Ahmad's Story Shows That The Order Violates Our Immigration Laws.

Ahmad M. is a 31-year-old Sunni Muslim man who currently lives in Madison, Wisconsin, with his wife and three-year-old daughter. He immigrated to the United States from Syria in 2014. He has become an engaged member of his community. He is active in his mosque and normally works 12 hours a day, seven days a week. He and his wife are expecting another child, who is due to be born next year. This is the happy ending to Ahmad's story. But it is one that could not and would not have occurred without the intervention of the federal courts.

A. Ahmad Flees Civil War For Safety In A Nation Of Immigrants.

We begin in 2011, as the "Arab Spring" protests first reached Syria. Syrian Accountability Project, Covered in Dust, Veiled by Shadow: The Siege and Destruction of Aleppo 8 (2017), https://goo.gl/4mHgYn. While activists protested Bashar al-Assad's totalitarian regime in Aleppo, Ahmad was celebrating his recent marriage. To support his new family, he began working as the manager of his father's outdoor-recreation business. Aff. ¶ 3.

Ahmad's wife gave birth to their first child, a son, in early 2012. She became pregnant with their second child, a daughter, shortly thereafter. By then, Syria had fallen into full civil war. *Id.* ¶ 4. Armed militias took control of Aleppo. The Syrian Arab Army ("SAA"), a militia aligned with the Assad regime, controlled the area in which Ahmad lived. The Free Syrian Army

("FSA"), a rebel militia affiliated with Sunni Muslims, controlled the area in which his father's business was located. *Id.* ¶ 5. The militias stationed snipers at the borders between their strongholds and targeted civilians who tried to cross. Janine di Giovanni, The Morning They Came for Us: Dispatches from Syria 127 (2016); Robert F. Worth, *Aleppo After the Fall*, N.Y. Times Magazine, May 24, 2017.

The SAA and rebel militias both subjected civilians in Aleppo to "unthinkable atrocities." Amnesty Int'l, "Death Everywhere:" War Crimes and Human Rights Abuses in Aleppo, Syria 6 (2015), https://goo.gl/U3rs1E. Both sides routinely imprisoned, tortured, and executed civilians. *Id.* at 16-17. Members of the FSA began extorting and kidnapping civilians, holding them in appalling conditions until they or their families paid a ransom. *Id.* at 45; Robin Yassin-Kassab & Leila Al-Shami, Burning Country: Syrians in Revolution and War 96 (2016). Sexual violence against women was rampant. Amnesty Int'l, *supra*, at 40.

Eventually, the militias got to Ahmad and his family. Because Ahmad is a Sunni Muslim, the SAA wrongly believed he sympathized with the FSA. Aff. ¶ 5. The FSA, for its part, wrongly believed he sympathized with the SAA because it controlled the area of Aleppo in which he lived. *Id.* This put Ahmad in an impossible—and impossibly dangerous—situation. He could not safely commute within Aleppo from his home in SAA territory to his father's business in FSA territory. Instead, he had to leave Aleppo entirely, circumvent the city, and reenter the FSA-controlled area from a different road, a trip that took approximately fifteen hours each way. *Id.* ¶¶ 6-7.

At the end of one trip in June 2013, he found that the FSA had commandeered his family's business. FSA members demanded that Ahmad pay them "protection money." When he said he could not pay, they slashed his abdomen with a knife and beat him severely. Ahmad was hospitalized and underwent surgery. His abdomen remains disfigured to this day. *Id.* ¶ 7.

Ahmad's wife gave birth to their daughter five months later. *Id.* ¶ 10. Ahmad was away at the time, visiting the United States with his parents on a tourist visa. *Id.* ¶ 8. The purpose of the trip was to try to find a way to get his family out of Syria, but he was unsuccessful in doing so. *Id.* ¶ 9. While in the United States, Ahmad learned that he had been conscripted by the SAA. Because he refused to fight for the Assad regime, he had to travel back to Syria in secret. *Id.* ¶ 10.

In February 2014, one month after he returned to Aleppo, SAA members broke into Ahmad's home. They beat him, kidnapped him, and locked him in an underground prison. He was imprisoned for two days before he was able to pay his captors' ransom. *Id.* ¶ 11.

Ahmad's circumstances grew even more dire in the following weeks. The Victory Front, an al-Qaeda branch affiliated with the FSA, declared that anyone who saw Ahmad should kill him on sight. *Id.* ¶ 12; *see* Yassin-Kassab & Al-Shami, *supra*, at 126-27 (discussing the Victory Front). The Victory Front added Ahmad to a "wanted dead or alive" list and posted it near his family's business. The list identified Ahmad and his parents by their full names. Aff. ¶ 12.

Having been conscripted into the SAA and marked for death by the FSA, Ahmad knew he could

not remain in Syria. He fled to the United States in March 2014. Immigration officials at Chicago O'Hare International Airport detained Ahmad for nearly a week. After determining that he had a credible fear of returning to Syria, however, they welcomed him into the country, consistent with the laws of the United States. *Id.* ¶ 13.

Ahmad's experience places him in a long history of immigrants, starting with the Founders, who fled persecution in their home countries for a safer life here. *In re Griffiths*, 413 U.S. 717, 719 (1973) ("From its inception, our Nation welcomed and drew strength from the immigration of aliens.").

B. Ahmad Is Separated From His Family, Who Remain In Mortal Danger In Syria.

Ahmad's arrival in the United States was bittersweet. He had narrowly escaped further harm in Syria, but his wife and two infant children remained in mortal danger.

Ahmad's wife, son, and daughter had to contend with "one of history's lengthiest campaigns of heavy aerial bombardment." Syrian Accountability Project, *supra*, at 29. From 2012 through December 2016, the Syrian military carried out a relentless bombing campaign against civilian areas in Aleppo. *Id.* at 10-17, 47-53. Using missiles, chemical weapons, and barrel bombs,[2] the military targeted residences,

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[2] Barrel bombs are improvised explosive devices made by packing "oil barrels, fuel tanks or gas cylinders" with "explosives, fuel and metal fragments—such as ball bearings, nails and machine parts." Amnesty Int'l, *supra*, at 19. They cannot be aimed at specific targets, so the Syrian Air Force used them to indiscriminately target civilians. *Id.* at 19-22. They "are

markets, bakeries, and hospitals. *Id.* at 10-17, 34-40; Amnesty Int'l, *supra*, at 20-34; *see also* U.S. State Dep't, Syria 2016 Human Rights Report 2 ("The Asad government and its supporters reportedly continued [in 2016] to use indiscriminate and deadly force against civilians, conducting air and ground-based military assaults on cities, residential areas, and civilian infrastructure.").[3] Rebel militias also attacked civilians areas using mortars and improvised rockets that locals called "hell cannons." Amnesty Int'l, *supra*, at 34-39.

In July 2015, an artillery strike killed Ahmad's son. The blast hit Ahmad's family's home. In the ensuing panic, his son—then just three years old—fell three stories to his death. Ahmad could not travel to Syria to mourn with his wife and daughter. Nor, given the security situation in Aleppo, could his wife give their son a proper funeral. He was buried hastily in a park and now rests in an unmarked grave. Aff. ¶ 19.

C. Ahmad Overcomes The Trump Administration's Attempts To Keep Him Away From His Family.

1. After an Immigration Judge granted Ahmad asylum under the INA and Convention Against Torture, Ahmad invoked the INA's protections for families by filing derivative-asylum petitions for his wife and daughter. *Id.* ¶¶ 20, 22.

While the Government was processing Ahmad's petitions, his family continued to suffer. The Syrian government began a siege of Aleppo in July 2016,

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unspeakably effective at causing pain." di Giovanni, *supra* at 123.

[3] https://www.state.gov/documents/organization/265732.pdf.

surrounding the city and cutting off supply lines. Syrian Accountability Project, *supra*, at 17-20. Over the next five months, the Syrian government blocked humanitarian aid and continued its bombing campaign against markets and bakeries. *Id.* at 28. The city's residents, including Ahmad's wife and daughter, lacked access to food and safe drinking water. *Id.* To make matters worse, Ahmad's daughter came down with tonsillitis. But because of the SAA's attacks on hospitals, she could not seek medical care.

Back in the United States and with limited means of communicating with his family, Ahmad spent every day obsessively checking Syrian news outlets, in constant dread that he would find out that an attack had taken his wife and daughter from him. *Id.* ¶¶ 24-25.

In the meantime, Ahmad followed the American presidential election in the media. A year and a half after Ahmad sought refuge in the United States from war-torn Syria, then-candidate Trump called for "a total and complete shutdown of Muslims entering the United States." J.A. 179. That campaign promise troubled Ahmad, who feared he would never again see his family.

2. On January 27, 2017, President Trump signed Executive Order 13,769. Ahmad filed suit, seeking a temporary restraining order prohibiting the enforcement of Executive Order 13,769 against him or his family. Complaint, *Doe*, No. 17-cv-00112 (Feb. 13, 2017), ECF No. 1. He withdrew his request for a TRO after the Government resumed processing Ahmad's petitions in response to the nationwide injunction entered in *Washington* v. *Trump*, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017).

Then, on March 6, Present Trump signed the revised Order. The Government admitted that the Order, once it went into effect, would block further consideration of Ahmad's petitions. Def. Opp. at 10-11, *Doe*, 3:17-cv-00112 (Mar. 16, 2017), ECF No. 40. Given the imminent threat to his reunification with his family, Ahmad renewed his request for a TRO. On March 10, the district court granted the request and enjoined the Government from enforcing the Order against Ahmad, his wife, or his daughter. *Doe*, 2017 WL 975996, at *1.

3. With an injunction in place in Ahmad's case, and then two additional, nationwide injunctions entered against enforcement of the Order, the Government continued to process Ahmad's derivative petitions and, in April 2017, Ahmad was reunited with his family. His story, however, is a cautionary tale. His reunion occurred only after great loss and suffering, and only because federal courts enjoined the Orders that would have stranded his wife and daughter in Syria. If this Court reverses the decisions of the Fourth and Ninth Circuits, the Order will keep other families apart. These families' stories, unlike Ahmad's, may not have happy endings.

II. The Order Violates The INA.

Ahmad's story places into sharp focus the reason why the Court should reject the Government's view of the President's authority to exclude entire nationalities under the INA. Congress granted a statutory right to asylees, including Ahmad, to seek derivative-asylum status for spouses and children. 8 U.S.C. § 1158(b)(3). Congress mandated that, in this process, the Government could not discriminate against Ahmad or his family on the basis of

nationality, but was instead required to make an individualized determination of admissibility. Had the President not adopted the Order, the Government would have simply processed Ahmad's derivative-asylum petitions according to law, ensuring that Ahmad's wife and three-year-old daughter did not pose a threat to the security of the United States.

The Government provides no satisfying reason why Congress, at the same time, intended to permit the President to upend this statutory scheme, separate the families of asylees and others, and suspend the United States' refugee program, all on the basis of a sweeping, national-origin-based say-so. There is none.

In enacting Section 1152(a), Congress "could hardly have chosen more explicit language." *Legal Assistance for Vietnamese Asylum Seekers* v. *Dep't of State*, 45 F.3d 469, 473 (D.C. Cir. 1995), *vacated on other grounds*, 519 U.S. 1 (1996) (per curiam). "Congress has unambiguously directed that no nationality-based discrimination shall occur." *Id.*

Congress instead mandated that individual aliens seeking entry into the United States are to be evaluated as individuals, on the basis of quasi-adjudicative facts found by the Executive. And Congress enacted a detailed list enumerating the individual criteria that the Executive should consider in evaluating alien admissibility. *See* 8 U.S.C. § 1182(a) (criteria for ineligibility include communicable disease, drug addiction, criminal history, violations of religious liberty, human trafficking, involvement in espionage, and terrorist activity); *see also id.* § 1158(b) (specifying "conditions for granting asylum").

The INA's focus on individualized determinations of eligibility for entry reflects the consensus in our jurisprudence that government action may not rely on "inquiries and categories dependent upon demeaning stereotypes, classifications of questionable constitutionality on their own terms." *Schuette* v. *BAMN*, 134 S. Ct. 1623, 1635 (2014) (plurality opinion of Kennedy, J.). Just as citizens must be "treat[ed] . . . as individuals, not as simply components of a racial, religious, sexual or national class," Congress has determined that the Nation's immigration framework will not "engage[] in the offensive and demeaning assumption" that "individuals a[re] the product of their race" or nationality, and will not "evaluat[e] their thoughts and efforts—their very worth as [potential] citizens—according to a criterion barred to the Government by history and the Constitution." *Miller*, 515 U.S. at 911-12 (citations and quotation marks omitted).

Sections 1182(f) and 1185(a)(1), on which the Government relies, therefore anticipate that the President can bar entry based upon classifications tied to individual circumstances involving a threat to the interests of the United States, but not arbitrary, group- or nationality-based characteristics. The existence of Congress's specific and detailed regime for individualized assessment of aliens—its "distinct regulatory regime"—"foreclose[s]" the Order's broad-based national-origin classification. *FDA* v. *Brown & Williamson Tobacco*, 529 U.S. 120, 137, 155 (2000).

Ahmad's story proves the point. The Government thoroughly evaluated Ahmad's wife and three-year-old daughter before granting them entry into the United States, verifying that none of the INA's

grounds for exclusion applied. Government officials therefore checked, among other things, that his wife and three-year-old daughter had no communicable diseases; that they had no criminal convictions; that they had not persecuted any person on the basis of race, religion, nationality, or membership in a particular social group; that they had not supported or engaged in any terrorist activity and did not intend to do so; and that they did not otherwise pose a threat to the security of the United States. The Government would have the Court hold that—although government officials checked all the boxes for these and other criteria—the President could still exclude Ahmad's wife and infant child because they are Syrians. There is no basis in law for that perverse result.

* * * *

Congress's decision to evaluate individuals on their own terms should lead the Court to reject the Government's sweeping interpretation of Sections 1182(f) and 1185(a)(1). *Cf. United States* v. *Witkovich*, 353 U.S. 194, 199-200 (1957) (in the immigration context, the Executive's legislatively conferred discretion must accord with the "purpose of the legislative scheme").

CONCLUSION

The Court should affirm the judgments of the Courts of Appeals.

Respectfully submitted,

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